

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM JOSEPH WEBB, JR.,)	
)	
Plaintiff,)	
)	
v.)	C. A. No. 07-31-GMS
)	
FIRST CORRECTIONAL MEDICAL,)	JURY TRIAL REQUESTED
et al.,)	
)	
Defendants.)	

STATE DEFENDANT’S OPPOSITION TO PLAINTIFF’S
MOTION FOR APPOINTMENT OF COUNSEL

Defendant Stan Taylor (“Defendant”), by and through undersigned counsel, hereby opposes Plaintiff’s *Motion for Appointment of Counsel*. (D.I.112). In support of his position, Defendant states the following:

1. On or about January 16, 2007, Plaintiff William J. Webb, Jr. (“Webb”), an inmate incarcerated at the Delaware Correctional Center in Smyrna, Delaware (“DCC”) filed a Complaint pursuant to 42 U.S.C. §1983 alleging constitutional violations in connection with his prison medical treatment. Webb was granted leave to proceed *in forma pauperis* on or about February 6, 2007. (D.I.5).

2. On or about May 8, 2008, Webb filed a *Motion for Appointment of Counsel* with an accompanying Declaration and Memorandum in support thereof. (D.I.112-114)

3. In support of his motion, Webb alleges that he is unable to afford counsel, the issues are complex, expert testimony is necessary and he has limited access to the law library at DCC. *Id.*

4. *Pro se* litigants proceeding *in forma pauperis* have no constitutional or statutory right to appointed counsel. (See *Smith Bey v. Petsock*, 741 F. 2d 22, 25 (3d Cir. 1984)). It is solely within the Court's discretion to appoint counsel for the plaintiff; however, such an appointment is "usually only granted upon a showing of special circumstances indicating a likelihood of substantial prejudice to him resulting... from his probable inability without such assistance to present the facts and legal issues to the court in a complex, arguably meritorious case." *Id* at 26, *accord*, *Pierce v. Vaughn*, 1992 WL 210122 (E.D.Pa.); *Robinson v. Barone*, 1992 WL 236869 (E.D. Pa.). The factors appropriately considered in deciding whether an appointment of counsel is warranted include the arguable merit of the plaintiff's claim, the plaintiff's ability to present his case, the difficulty of the particular issues, the degree to which factual investigation will be required and the plaintiff's ability to pursue such investigation, the likelihood that witnesses' credibility will be key issue, and the need for expert testimony. *Tabron v. Grace*, 6 F.3d 147, 155-56 (3d Cir. 1993), *cert. denied*, 114 S. Ct. 1306 (1994).

5. Webb, no stranger to the legal system, has a clear understanding of the issues involved in this case and has proven himself quite capable in responding and addressing his claims in this Court. Contrary to Webb's assertions that the issues are complex, no complex issues have been presented in this case. Furthermore, as illustrated by the motions Webb has filed thus far, he has displayed a firm grasp of legal precepts in this case. In addition to a complaint that sufficiently articulates his claims, Webb has filed numerous motions containing pertinent case law and court rules. This not only demonstrates his legal knowledge, but also shows that this case is not so unusually complex as to require the assistance of counsel. In fact, Webb has shown great skill and

ability to litigate this action *pro se*, through his filing of discovery motions and extensive pleadings, as well as adherence to court orders. Further, Webb fails to establish that without the appointment of counsel that he demonstrates any other “special circumstances indicating the likelihood of substantial prejudice” cited by the Court in *Smith-Bey*. *Smith-Bey* at 26. Defendant contends that Webb has shown that he is fully capable of litigating this lawsuit, making appointment of counsel unnecessary. This case is neither factually or legally complex, and therefore, court appointed counsel is not warranted.

6. While Webb pleads that his incarceration in the SHU limits his access to the law library; however, records show that Webb does have sufficient access to the law library and legal materials. Attached is a copy of Webb’s library use for the last two months including legal copies he requested in addition to photocopying requests. (*See* Exhibit 1). The record shows that Webb was not denied the materials he requires to file any documents with the court. While Webb’s access to the law library may be “limited” due to his housing unit, he nevertheless has law library access which is reflected in the numerous motions Webb has filed with the Court throughout this litigation.

7. Moreover, at this point, Webb has simply made bold, unsupported allegations against the Defendant. It is apparent that Webb is suing the Defendant based upon his supervisory responsibilities. As personal involvement in a constitutional deprivation is a necessary prerequisite to liability, it is unlikely that Webb can mount a meritorious claim against the Defendant. Without more, the request for counsel is not warranted.

WHEREFORE, Defendant respectfully requests that this Honorable Court deny

Webb's *Motion for Appointment of Counsel*.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Catherine Damavandi
Catherine Damavandi, ID#3823
Deputy Attorney General
Department of Justice
State of Delaware
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302) 577-8400
Attorney for Defendant Stan Taylor

Dated: May 22, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2008 I electronically filed *State Defendant Stan Taylor's Opposition to Plaintiff's Motion for Appointment of Counsel* with the Clerk of Court using CM/ECF, which will send notification to the following:

Eileen M. Ford, Esq. eford@mooclaw.com
Megan Trocki Mantzavinos, Esq. mmantzavinos@mooclaw.com

I further certify that on May 22, 2008, I caused the within document to be mailed to the following non-registered participant by United States Postal Service:

William J. Webb, Jr., SBI#256056
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Catherine Damavandi
Deputy Attorney General, ID #3823
Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
Catherine.Damavandi@state.de.us
Attorney for Defendant Stan Taylor

March – May 2008 Record of Ongoing Law Library Use
by William J. Webb, Jr., SBI#256056

Inmate Name	SBI #	Date In	Date Out	Request Type	Staff
William Webb	256056	3/7/2008	3/12/2008	Escheat Index; (1) Address	B.E.
William Webb	256056	3/11/2008	3/11/2008	Request for Notary; Photocopies 4x4=16pgs.	B.E.
William Webb	256056	3/11/2008	3/11/2008	Photocopies 2x2=4pgs.	B.E.
William Webb	256056	3/14/2008	3/19/2008	Photocopies 1x4=4pgs.	B.E.
William Webb	256056	3/14/2008	3/20/2008	Title 12 s. 1180-1193; Ct. Cases (4) 49 pgs.	B.E.
William Webb	256056	3/14/2008	3/14/2008	Return Ct. Cases (4)	B.E.
William Webb	256056	3/28/2008	4/1/2008	Photocopies 4x3=12pgs.; Ct. Case(1) 16 pgs.	B.E.
William Webb	256056	3/28/2008	4/1/2008	(6)Cert.Svc.; Request for Notary	B.E.
William Webb	256056	3/28/2008	3/28/2008	Return Title12s.1180-87,89-93; Ct. Cases (4)	B.E.
William Webb	256056	4/10/2008	4/11/2008	Photocopies 4x6=24pgs.,4x3=12pgs.	B.E.
William Webb	256056	4/10/2008	4/11/2008	(4) Cert. Svc.; Ct. Cases (2) 15 pgs.	B.E.
William Webb	256056	4/10/2008	4/10/2008	Return Ct. Case (1)	B.E.
William Webb	256056	4/14/2008	4/15/2008	Ct. Cases (2) 10 pgs.; SuperCtCrR.11-2000ed.	B.E.
William Webb	256056	4/14/2008	4/15/2008	FPD&AtIDigK.1134(3),60,2279-101 pgs.	B.E.
William Webb	256056	4/14/2008	4/14/2008	Return Ct. Cases (2)	B.E.
William Webb	256056	4/17/2008	4/18/2008	Photocopies 3x71=213 pgs.	B.E.
William Webb	256056	4/18/2008	4/22/2008	Photocopies 3x7=21 pgs.	B.E.
William Webb	256056	4/22/2008	4/24/2008	Photocopies 2x2=4pgs.; 2x17=34pgs.	B.E.
William Webb	256056	4/22/2008	4/24/2008	Fam Ct Cv R. 55	B.E.
William Webb	256056	5/1/2008	5/5/2008	Photocopies 64 pgs.; Request for Notary	C.K.
William Webb	256056	5/5/2008	5/6/2008	Photocopies 3x3= 9 pgs.	B.E.

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ORDER

IT IS SO ORDERED, this _____ day of _____, 2008, that Plaintiff's *Motion for Appointment of Counsel* is hereby **DENIED**.

Chief Judge Gregory M. Sleet